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KINTA RIVERFRONT HOTEL & SUITES SDN BHD v. CHANG YOKE YEE & ANOR

COURT OF APPEAL, PUTRAJAYA
KAMALUDIN MD SAID JCA
AZIZAH NAWAWI JCA
B RAVINTHRAN PARAMAGURU JCA
[CIVIL APPEAL NO: A-02(NCVC)(W)-1771-11-2020]
22 NOVEMBER 2022

C **Abstract** – *The defence of absolute privilege is extended to everything said in the course of court proceedings. Hence, defamatory averments in pleadings are absolutely immune; a statement of defence made maliciously and in bad faith should not be relevant in such instances.*

D ***TORT:*** *Defamation – Absolute privilege – Averments in statement of defence – Whether defamatory in nature – Whether statements published in course of court proceedings protected by absolute privilege – Whether defence made with malicious intent and in bad faith relevant consideration – Whether defamatory statements made against parties to suit – Whether defamation published within four corners of court proceedings – Whether statements absolutely immune*

E The first and second respondents, a businesswoman and senior lawyer respectively, while in a room in the hotel run by the appellant, were assaulted by a man, who claimed to be the first respondent's husband the ('second defendant'). The second defendant was alleged to have obtained an access card from the reception staff and barged into the hotel room occupied F by the respondents. Following the incident, the respondents filed a civil suit against both the appellant and the second defendant. The cause of action pleaded against the appellant was the tort of negligence as the hotel staff had given the room access card to the second defendant. The tort of assault was pleaded against the second defendant. The respondents succeeded in their G action at the Sessions Court. At the Sessions Court, the appellant had, in the statement of defence, pleaded that the respondents committed adultery which was the cause of the altercation between them and the second defendant. The respondents filed an application to strike out all the averments relating to the allegations of adultery on the ground that they were frivolous, vexatious, H scandalous and malicious. The Sessions Court allowed the application, and the appellant did not appeal against the said decision. The respondents subsequently instituted a defamation action at the High Court, contending that the allegations of adultery in the statement of defence filed in the negligence action by the appellant were defamatory. The High Court Judge, I having found that the defences of justification and fair comment failed, held

the appellant liable for defaming the respondents. In this appeal, the main issue that arose was whether the appellant could avail the defence of absolute privilege as the defamation was published in the course of court proceedings in the statement of defence.

Held (allowing appeal)
Per Ravinthran Paramaguru JCA delivering the judgment of the court:

(1) Pleadings and documents filed in court proceedings are protected by absolute privilege. Once it is accepted that absolute privilege applies to an averment in a pleading, there could be no question of limiting the defence by placing restriction on it such as the requirement of relevance and good faith. The parties against whom the defamatory statements were made were obviously parties who had connection with the negligence suit. The defamation was published in the statement of defence. Hence, the defamation was published within the four corners of a court proceeding. Although the impugned averments were irrelevant, reckless and perhaps malicious, the defence of absolute privilege could be availed by the appellant. (paras 30, 31 & 34)

Case(s) referred to:
Chan Tse Yuen & Co v. Yap Chin Gaik, Elaine & Ors [2017] 1 LNS 1409 HC ***(refd)***
Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals [2017] 8 CLJ 369 FC ***(refd)***
Hock Peng Realty Sdn Bhd v. Ting Sie Chung & Another Appeal [2018] 1 CLJ 776 CA ***(refd)***
Kalung Makmur Sdn Bhd v. Lo Yen Nyuk [2018] 1 CLJ 459 CA ***(refd)***
Lee Yoke Yam v. Chin Keat Seng [2012] 9 CLJ 833 FC ***(refd)***
Lincoln v. Daniels [1961] 3 All ER 740 CA ***(refd)***
Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar [2001] 3 CLJ 65 CA ***(dist)***
Munster v. Lamb [1883] 1 QBD 588 ***(refd)***
Royal Aquarium And Summer And Winter Garden Society, Limited v. Parkinson [1892] 1 QB 431 CA ***(refd)***
S Ashok Kandiah & Anor v. Dato' Yalumallai Muthusamy & Anor [2011] 1 CLJ 460 CA ***(refd)***
Wescott v. Wescott [2008] EWCA Civ 818 ***(refd)***

Legislation referred to:
Defamation Act 1957, s. 11

Other source(s) referred to:
Gatley on Libel and Slander, 11th edn, p 382

For the appellant - Rabinder Singh & Munira Hasnim; M/s KS Su & Mah
For the respondents - Raam Kumar & Norleena Jamal; M/s KB Tan Kumar & Partners

[Editor's note: Appeal from High Court, Ipoh; Suit No: AA-22NCVC-23-02-2018 (overruled).]

Reported by S Barathi

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JUDGMENT

Ravinthran Paramaguru JCA:

Introduction

B **[1]** The appellant who was the first defendant in the High Court was found liable for defaming the respondents. The second defendant did not defend the action and judgment in default was entered against him. The alleged defamatory statement was published in a statement of defence filed by the appellant in another suit; a negligence suit brought by the respondents. The main issue in the court below and before us is whether the appellant can avail C the defence of absolute privilege as the defamation was published in the course of court proceedings in the statement of defence.

Background Facts

[2] The first respondent is a businesswoman. The second respondent is a D senior lawyer. The appellant runs a hotel in Ipoh. The second defendant is an individual who apparently claimed to be the husband of the first respondent. This fact was disputed by the first respondent. The detailed factual background need not detain us long as it is apparent that the big question that arises in this appeal is a question of law about the defence of E absolute privilege. It suffices if we summarise what happened in the hotel that involved the respondents and the second defendant.

[3] On 17 December 2016, the respondents were in a room in the hotel in question that was managed by the appellant. The second defendant obtained an access card from the reception staff and barged into the hotel F room occupied by the respondents. He assaulted both respondents. Following this incident, the respondents filed a civil suit (Suit AA-22ANCVC-301-2017) against both the appellant and the second defendant in the High Court. The cause of action pleaded against the appellant was the tort of negligence as the hotel staff had given the room access card to the second defendant. The tort of assault was pleaded against the second defendant. The G suit was transferred to the Sessions Court. The respondents succeeded in their action against the appellant and the second defendant in the Sessions Court. After that, the respondents instituted the instant defamation action in the High Court.

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Defamation Action

[4] It is the respondents' case the adultery allegations in the statement of defence filed in the negligence action by the appellant were defamatory. In the statement of defence, the appellant pleaded that the respondents committed adultery and that was the cause of the altercation between them I and the second defendant. The respondents filed an application to strike out

all the averments relating to the adultery allegation on the ground that they are frivolous, vexatious, scandalous and malicious. The Sessions Court allowed the application and the appellant did not appeal the decision.

[5] However, the matter of the defamatory averments in the statement of defence did not end after they were struck out. The respondents issued a notice of demand on 27 December 2017 to the appellant and the second defendant demanding retraction and unconditional apology in the newspapers for the defamatory pleadings. Upon failure of the appellant and the second defendant to accede to the notice of demand, the respondents filed the instant defamation suit against them.

Defamatory Averments

[6] The respondents pleaded that the following averments in the original statement of defence filed by appellant was defamatory of them. The averments pertain to the allegation that they committed adultery in the hotel room in question. The averments are as follows:

> Paragraph 5:
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> Defendan Pertama menegaskan bahawa kebanyakan kakitangan Defendan Pertama mengenali Plaintif Pertama dan Defendan Kedua sebagai suami isteri seperti mana yang diketahui umum.
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> Paragraph 8:
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> Defendan Pertama menegaskan bahawa Plaintif Kedua adalah seorang individu yang mempunyai isteri dan anak-anaknya melalui perkahwinan yang sah, dan Defendan Pertama dan kakitangannya pula hanya mengenali Plaintif Pertama dan Defendan Kedua sebagai suami isteri, pada segala masa yang material. Defendan Pertama memohon Plaintif Kedua untuk mengemukakan butiran berkenaan perkahwinannya yang sah dan anak-anaknya, semasa perbicaraan tindakan ini untuk membuktikan kepada Mahkamah, berkenaan sebab pertelingkahan dan pergaduhan berlaku di antara Plaintif Kedua dan Defendan Kedua. Defendan Pertama menegaskan bahawa pertelingkahan di antara Plaintif-Plaintif dan Defendan Kedua berlaku akibat hubungan sulit dan zina (adultery) di antara Plaintif-Plaintif dan dengan itu pergaduhan yang berlaku adalah berada di luar kawalan Defendan Pertama.
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> Paragraph 9:
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> Defendan Pertama menegaskan bahawa ianya adalah tindakan Plaintif Ke 2 yang sanggup menetap di dalam bilik yang sama dengan isteri Defendan Ke 2 yang mencetuskan pergaduhan dan pertelingkahan di dalam kes ini. Defendan Pertama tidak mempunyai apa-apa pengetahuan berkenaan hubungan sulit dan zina ("adultery") di antara Plaintif-Plaintif.
>
> Paragraph 10:
>
> Defendan Pertama menyatakan bahawa Penyambut Tetamu Defendan Pertama telah memberikan kad akses kepada Defendan Ke 2 dengan anggapan bahawa Defendan Ke 2 ingin berjumpa isterinya yang menetap

A di bilik no. 1809, pada hari tersebut dan Penyambut Tetamu Defendan Pertama tidak mempunyai pengetahuan berkenaan hubungan sulit di antara Plaintif-Plaintif. Defendan Pertama tiada apa-apa niat lain selain membantu Defendan Ke 2 untuk pergi berjumpa dengan isterinya, yang dikenali oleh Penyambut Tetamu.

B Paragraph 11:

Defendan Pertama menegaskan bahawa Defendan Pertama tidak pernah berdepan dengan kes melibatkan hubungan sulit yang ditangkap, sepertimana kes ini.

Paragraph 12:

C Defendan Ke 2 telah amat marah dengan tindakan Plaintif Pertama yang didapati menjalin hubungan sulit dengan Plaintif Ke 2 yang juga adalah seorang yang telah berumahtangga. Defendan Pertama percaya bahawa Defendan Ke 2 akan mengemukakan Pembelaan yang sewajarnya berkenaan hubungannya dengan Plaintif Pertama.

D **[7]** The respondents prayed for the following reliefs from the appellant and the second defendant:

(a) general damages;

(b) exemplary and aggravated damages;

E (c) irrevocable apologies and withdrawal of all allegations by the Defendants;

(d) undertaking in writing not publish or caused to be published false allegations against the Plaintiffs in the future;

F (i) compensation to be paid to the Plaintiffs;

(ii) legal costs based on the solicitor-client basis; and

(iii) any other reliefs that this Honourable Court deems just and fair

[8] As we noted earlier, the second defendant did not enter appearance and judgment in default was entered against him on 10 February 2020. The G appellant filed an application to strike out the suit on the ground that the impugned defamatory averments in the statement of defence were protected by absolute privilege. The High Court allowed the striking out application of the appellant but upon appeal, the Court of Appeal reversed the decision. The Court of Appeal was of the view that the issue whether the instant H appellant was entitled to the defence of absolute privilege should be decided by the learned trial judge after a full trial.

Trial Before The High Court

[9] The only witness for the respondents were themselves. The I respondents' case was that the impugned averments that had been struck out contained the following imputations:

(a) The Plaintiffs had committed adultery;

(b) The Plaintiffs had an affair and was caught committing adultery;

(c) The First Plaintiff as the wife of the Second Defendant had an extra-marital affair with the Second Plaintiff;

(d) The Plaintiffs were adulterers;

(e) The Plaintiffs had committed adultery and cheated on their respective spouses;

(f) The Plaintiffs' characters were bereft of honesty and integrity;

(g) The Plaintiffs' lacked self-respect and have no morals; and

(h) The Plaintiffs were people of unworthy and uncreditable reputation and were untrustworthy.

[10] The appellant raised the defence of absolute privilege and justification and fair comment. However, at the end of the plaintiff's case, the appellant submitted a no case to answer and did not call any witness.

Decision Of High Court

[11] The appellant did not give any evidence in this case as they elected to submit a no case to answer. The respondents denied committing adultery. In the premises, the learned High Court Judge found that the defence of justification and fair comment failed.

[12] The learned High Court Judge dealt at length with the defence of absolute justification. His Lordship firstly noted that the provision of the defence of absolute privilege in the Defamation Act 1957 (Revised 1983) in s. 11 pertains to reports of judicial proceedings. In respect of a defamatory statement made in the course of a court proceeding, either by a litigant, counsel or witness, the learned High Court Judge said the defence of absolute privilege is afforded by the common law as applied in our jurisdiction. He cited the local cases of *Hock Peng Realty Sdn Bhd v. Ting Sie Chung & Another Appeal* [2018] 1 CLJ 776; *Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals* [2017] 8 CLJ 369; and *Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar* [2001] 3 CLJ 65. In all those cases, the landmark English authorities on the defence of absolute privilege were discussed. The said English cases are *Royal Aquarium And Summer And Winter Garden Society, Limited v. Parkinson* [1892] 1 QB 431 CA, *Lincoln v. Daniels* [1961] 3 All ER 740 CA and *Munster v. Lamb* [1883] 1 QBD 588.

[13] However, the learned High Court Judge was of the view that the defence of absolute privilege is not without restrictions. His Lordship said as follows in the following paragraphs of his judgment:

> [68] I fully agree with and equally bond by the position taken by the Court of Appeal above. In my mind, the requirement of relevance and good faith as a proviso to the defence of absolute privilege specifically in judicial proceedings is of utmost importance. This is to avoid possible instances

A where a party may be improperly and maliciously harassed with irrelevant, scandalous, malicious, libellous or slanderous defamatory statements guised in the blanket form of a statement made in the course judicial proceeding by the other party.

...

B [70] In the present case, I agree with the learned counsel for the Plaintiffs that the impugned statements in the Statement of Defence which impute that the Plaintiffs had committed adultery, cohabitation and were involved in extra-marital affairs are of no particular relevance to the Initial Suit which was based on the tort of negligence, assault and breach of privacy ...

C

[14] Two authorities were cited by the learned High Court Judge for this view. The first authority is the judgment of this court in *Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar* (*supra*). In that case, the major English cases on the defence of absolute privilege in respect of

D statements made in the course of court proceedings were cited with approval. Nonetheless, there is a passage in the said judgment where Haidar JCA said that a defamatory statement of person who has absolutely no connection with the court proceedings in question cannot be protected by the defence of absolute privilege.

E **[15]** The second authority cited by the learned High Court Judge is the dissenting judgment of Hamid Sultan JCA in the case of *Kalung Makmur Sdn Bhd v. Lo Yen Nyuk* [2018] 1 CLJ 459. That case concerned a defamatory statement in a police report. Hamid Sultan JCA in his dissenting judgment express doubt if a malicious complainant can be granted absolute immunity.

F On the other hand, the majority judges held that malice is not relevant and that statements in a police report are protected by absolute privilege.

[16] In the instant case, having found that the defamatory averments in the statement of defence were maliciously made and in bad faith, the learned High Court Judge held that they are not protected by absolute privilege and

G entered judgment for the respondents. The learned High Court Judge granted judgment in favour of the respondents as follows:

(a) General damages of RM50,000.00 to the First Plaintiff and RM150,000.00 to the Second Plaintiff;

H (b) Aggravated damages of RM20,000.00 to the First Plaintiff and RM30,000.00 to the Second Plaintiff;

(c) Exemplary damages of RM20,000.00 to the First Plaintiff and RM30,000.00 to the Second Plaintiff;

Issues

I **[17]** As we said earlier, the main issue seriously argued before us is whether the appellant is entitled to rely on the defence of absolute privilege. If the answer is in the affirmative, the second issue would be whether the

learned High Court Judge committed an error of law by ruling that the defence cannot be availed because of the irrelevancy of the defamatory pleadings, lack of good faith and malice. Nonetheless, we shall make brief reference to the other issues first.

Justification And Fair Comment

[18] The first respondent testified that she was not married to the second defendant. The second respondent, on the other hand said that he is a married man. The only fact conceded by the respondents was that they were in the hotel room at the material time. The respondents categorically denied committing adultery in their evidence. The evidence of the respondents denying that they committed adultery was not seriously challenged during cross-examination by counsel for the appellant. No witnesses were called on behalf of the appellant either. The second defendant allowed judgment to be entered by default. He did not give evidence. The burden to prove the defence of justification was on the appellant. In the premises, we see no error in the finding of the learned High Court Judge that the defence of justification failed. Similarly, the defence of fair comment, although not dealt with by the High Court, cannot stand as the foundational fact of adultery was not proved. Therefore, no fair comment can be validly made upon it.

Defence Of Absolute Privilege

[19] We do not propose to cite all the major local cases that discussed the defence of absolute privilege. We find that the law is fairly settled on this issue. We are more concerned with the application of the law to the facts of this case; particularly the correctness of the decision of the learned High Court Judge who placed a restriction on the defence of absolute privilege.

[20] However, for the sake of directing ourselves on the law, we shall first quote below some passages from three eminent English authorities on the defence of absolute privilege that is granted to defamatory statements that are made in the course of court proceedings.

[21] In the early ground-breaking case of *Royal Aquarium* (*supra*), the principle of absolute privilege was laid widely and in absolute terms by Lopes LJ in the following passage:

> The authorities establish beyond all question this: that neither party, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognised by law, and this though the words written or spoken were written or spoken maliciously, without any justification or excuse, and from personal ill-will and anger against the person defamed.

[22] In *Lincoln v. Daniels* (*supra*), Devlin LJ unambiguously and without qualification said that the defence of absolute privilege extends to all pleadings for the purpose of court proceedings. The relevant passage which is quoted often in our courts is as follows:

> The absolute privilege which covers proceedings in or before a court of justice can be divided into three categories. The first category covers all matters that are done *coram judice*. This extends to everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence.
>
> The second covers everything that is done from the inception of the proceedings onwards **and extends to all pleadings and other documents brought into existence for the purpose of the proceedings and starting with the writ or other document which institutes the proceedings**.
>
> The third category is the most difficult of the three to define. It is based on the authority of *Watson v. McEwan*, in which the House of Lords held that the privilege attaching to evidence which a witness gave *coram judice* extended to the precognition or proof of that evidence taken by a solicitor.
>
> (emphasis added)

[23] The position in English law is also captured succinctly in *Gatley on Libel and Slander*, 11th edn, at p. 382 as follows:

> No action will lie for defamatory statements, whether oral or written, made in the course of judicial proceedings before a court of justice or a tribunal exercising functions equivalent to those of an established court of justice. (gratefully extracted from the judgment of S Nantha Balan J in *Chan Tse Yuen & Co (suing as a firm) v. Yap Chin Gaik, Elaine And Others* [2017] 1 LNS 1409.

[24] The rationale for the absolute privilege was expressed in the well-known case of *Munster v. Lamb* (*supra*) by the English Court of Appeal in the following passage:

> If the rule of law is otherwise, the most innocent of counsel might be unrighteously harassed with suits, and therefore it is better to make it a rule of law so large that an innocent counsel shall never be troubled, although by making it so large counsel are included, who have been guilty of malice and misconduct.

[25] The above-mentioned passage was quoted by Haidar JCA in *Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar* (*supra*). His Lordship also noted that Mathew J at the court of first instance in *Munster v. Lamb* (*supra*), placed a restriction on the immunity by saying as follows:

> Words spoken by an advocate in the course of the defence of his client, however, defamatory they may be of the prosecutor, are not actionable, provided **they are relevant to the matter at hand, and spoken in good faith**.
>
> (emphasis added)

[26] Haidar JCA endorsed the above-mentioned passage in his judgment and said as follows: A

> No doubt, such view was not adopted by the Court of Appeal in *Munster v. Lamb* but with respect, we are of the view that if there is no restriction that would amount to giving a counsel or a party a *carte blanche* to make a defamatory statement of a person or party who has absolutely no B connection with the proceedings before the court. Surely this cannot be the position and with respect, we disagree with the learned judge on "his view there must be no restriction placed in the way of the principle".

[27] The above observation of Haidar JCA was cited by the learned High Court Judge in the instant case to place restriction on the defence of absolute C privilege that was pleaded by the appellant. His Lordship said that the appellant cannot claim absolute privilege because the defamatory averments in the statement of defence were not relevant and were not made in good faith.

[28] In our opinion, the learned High Court Judge seriously misdirected D himself by relying on the above-mentioned passage in the judgment of Haidar JCA to deprive the appellant of the defence of absolute privilege. Our reasons are as follows.

[29] In *Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar* (*supra*), E the plaintiff pleaded nine instances of defamation. The passage in question is in relation to the first and second defamation which were made in the submissions to the court in another suit. Nonetheless, Haidar JCA found that the defamatory statements were protected by absolute privilege because they were made in submissions filed in the course of court proceedings. His Lordship did not restrict the defence of absolute privilege. The decision in F respect of the first and second defamation is as follows:

> In the circumstances we agree with the learned judge's finding that **however defamatory the contents of those written submissions (some of which tend to go overboard)** of the respondent may be, they are protected by absolute privilege. In view of our finding affirming the decision of the G learned judge, the cross-appeal by the respondent fails. (emphasis added)

[30] The passage relied on by the learned High Court Judge to restrict the defence of absolute privilege is not applicable for two other reasons as well. The first reason is that Haidar JCA was referring to a hypothetical situation in which a defamatory statement is made against someone "who has H absolutely no connection" with the court proceedings in question. In the instant case, the parties against whom the defamatory statements were made are obviously parties who have connection with the negligence suit. This point was missed by the learned High Court Judge. Thus, the passage relied on by the learned High Court Judge is not applicable to the facts of the instant I case.

[31] The second reason is that the defamation in this case was published in the statement of defence. The principle that pleadings and documents filed in court proceedings are protected by absolute privilege as stated in the trio of English cases that we cited above has been consistently accepted and applied by our courts. For example, see the cases of *S Ashok Kandiah & Anor v. Dato' Yalumallai Muthusamy & Anor* [2011] 1 CLJ 460; *Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar* (*supra*) and *Chan Tse Yuen & Co v. Yap Chin Gaik, Elaine & Ors* [2017] 1 LNS 1409. In the premises, once it is accepted that absolute privilege applies to an averment in a pleading, there can be no question of limiting the defence by placing restriction on it such as the requirement of relevance and good faith. Otherwise, only the defence qualified privilege will apply to defamatory statements made in the course of court proceedings.

[32] As we said earlier, the second authority relied on by the learned High Court Judge to place restrictions on the defence of absolute privilege is the dissenting judgment of Hamid Sultan JCA in *Kalung Makmur Sdn Bhd v. Lo Yen Nyuk* (*supra*). In that case, Hamid Sultan JCA cited the following passage from *Wescott v. Wescott* [2008] EWCA Civ 818 which is the English authority on granting absolute privilege in respect of a defamatory police report:

> [32] The authorities recited above have made it clear that the justification for absolute immunity from suit will depend upon the necessity for the due administration of criminal justice that complaints of alleged criminal conduct should always be capable of being made to the police free from fear that the person accused will subsequently involve the complainant in costly litigation. There is a countervailing public interest in play which is that no-one should have his or her reputation traduced, certainly not without affording him or her a remedy to redress the wrong. *A balance has to be struck between these competing demands: is it necessary to clothe the occasion with absolute privilege in which event even the malicious complainant will escape being held to account, or is it enough to allow only the genuine complainant a defence? Put it another way: is it necessary to protect from vexatious litigation those persons making complaint of criminal activity even at the cost of sometimes granting that impunity to malicious and untruthful informants? It is not an easy balance to strike. We must be slow to extend the ambit of immunity*.
>
> (emphasis added)

[33] After citing the abovementioned passage, the learned High Court Judge imposed the requirement that the impugned pleadings must be relevant and made in good faith before absolute privilege can be availed. We find that the learned High Court Judge again misdirected himself by doing so. The abovementioned case was in relation to a police report and not a defamatory pleading in court proceedings. Secondly, the majority of the Court of Appeal correctly held that by virtue of the Federal Court decision in *Lee Yoke Yam v. Chin Keat Seng* [2012] 9 CLJ 833, police reports are covered by absolute privilege.

Conclusion

[34] In concluding this judgment we have this to say. The defamation in the instant case was published within the four corners of a court proceeding. Although the impugned averments were irrelevant, reckless and perhaps malicious, by virtue of the eminent authorities that we cited, defence of absolute privilege can be availed by the appellant. The learned High Court Judge erred in deciding otherwise. In the premises, we shall allow this appeal and set aside the decision of the High Court. Given the circumstances in which the defamation action arose, we make no order as to costs.